

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

CASA DE MARYLAND, INC., *et al.*

Plaintiffs,

v.

ALEJANDRO MAYORKAS, *et al.*

Defendants.

Civil No. 20-2118-PX

**PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT
ON THEIR HOMELAND SECURITY ACT CLAIM**

Pursuant to Federal Rule of Civil Procedure 56(c)(1), Plaintiffs CASA de Maryland ("CASA"), Asylum Seeker Advocacy Project ("ASAP"), Centro Legal de la Raza ("Centro Legal"), Oasis Legal Services ("Oasis"), and Pangea Legal Services ("Pangea") submit the following statement of undisputed material facts in support of their Motion for Summary Judgment on their Homeland Security Act ("HSA") claim.

I. The Challenged Rules

1. On September 9, 2019, the Department of Homeland Security ("DHS") issued a notice of proposed rulemaking ("NPRM") that announced its intention to repeal a regulatory provision requiring USCIS to adjudicate initial Form I-765(c)(8) employment authorization applications within 30 days of the date on which the agency receives the application. Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 84 Fed. Reg. 47,148 (Sept. 9, 2019) (to be codified at 8 C.F.R. pt. 208), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-09-09/pdf/2019-19125.pdf>.

Kevin McAleenan, the purported Acting Secretary of DHS, signed this NPRM. *Id.* at 47,170.

2. On June 22, 2020, DHS issued a final rule repealing that 30-day regulatory timeline. Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applicants, 85 Fed. Reg. 37,502 (June 22, 2020) (to be codified at 8 C.F.R. pt. 208) (“Timeline Repeal Rule”), ECF No. 24-2.

3. The Timeline Repeal Rule was “reviewed and approved” by the then-purported Acting Secretary of DHS, Chad Wolf. *Id.* at 37,545.

4. The Timeline Repeal Rule became effective on August 21, 2020. *Id.* at 37,502.

5. On November 14, 2019, DHS issued an NPRM announcing its intention to impose additional limitations on asylum seekers’ eligibility for work authorization and to modify certain aspects of DHS processing of applications for asylum and for employment authorization. Asylum Application, Interview, and Employment Authorization for Applicants, 84 Fed. Reg. 62,374 (Nov. 14, 2019) (to be codified at 8 C.F.R. pts. 208, 274), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-11-14/pdf/2019-24293.pdf>. Kevin McAleenan, the purported Acting Secretary of DHS, signed this NPRM. *Id.* at 62,424.

6. On June 26, 2020, DHS issued a final rule on this matter. Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38,532 (June 26, 2020) (to be codified at 8 C.F.R. pts. 208, 274) (“Broader EAD Rule”), ECF No. 24-3.

7. The Broader EAD Rule was “reviewed and approved” by the then-purported Acting Secretary of DHS, Chad Wolf. *Id.* at 38,626.

8. The Broader EAD Rule became effective on August 25, 2020. *Id.* at 38,532.

II. Amendments to the DHS Succession Order

9. On April 10, 2019, then-Secretary of Homeland Security Kirstjen Nielsen purported to amend the existing order of succession for the office of the Secretary, Delegation 00106, issued in 2016 by then-Secretary of Homeland Security Jeh Johnson. *See* DHS Orders of Succession and Delegations of Authorities for Named Positions, Rev. 8.5, dated April 10, 2019 (the “April 2019 Amendment”), ECF No. 24-15.

10. The April 2019 Amendment provides that “[i]n case of the Secretary’s death, resignation, or inability to perform the functions of the Office,” the order of succession is governed by Executive Order 13753, amended on December 9, 2016. April 2019 Amendment at II.A; *see* Exec. Order No. 13,753, 81 Fed. Reg. 90,667 (Dec. 9, 2016) (“Executive Order 13753”), ECF No. 24-16.

11. The April 2019 Amendment also provided that in the event of “disaster or catastrophic emergency,” the delegation of authority is determined by an updated version of Annex A included in the April 2019 Amendment. April 2019 Amendment at II.B.

12. Under Executive Order 13753, the order of succession is, in relevant part, as follows: “(i) Deputy Secretary of Homeland Security; (ii) Under Secretary for Management; (iii) Administrator of the Federal Emergency Management Agency; (iv) Under Secretary for National Protection and Programs; . . . (vii) Commissioner of U.S. Customs and Border Protection.” Executive Order 13753 at 90,667.

13. In 2018, Public Law 115-278 renamed the position of Under Secretary for National Protection and Programs to be Director of the Cybersecurity and Infrastructure Security Agency (“CISA”). Cybersecurity and Infrastructure Security Agency Act of 2018, Pub. L. No. 115-278, § 2202(b)(1), 132 Stat. 4168, 4169 (codified at 6 U.S.C. § 652(b)(1)), *available at*

<https://www.govinfo.gov/content/pkg/PLAW-115publ278/pdf/PLAW-115publ278.pdf>.

14. Former Secretary of DHS Nielsen resigned from her position no later than April 10, 2019. *See* Blackwell Decl., ECF No. 41-1 ¶ 6.

15. On April 10, 2019, the position of Deputy Secretary was not filled, and that position had been vacant since April 14, 2018. *See* U.S. Government Accountability Office Decision, Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security (Aug. 14, 2020) (“GAO Report”), ECF No. 51-1 at 4.

16. On April 10, 2019, the Under Secretary for Management resigned, leaving that position vacant as well. *Id.*

17. On April 10, 2019, the office of the Under Secretary for National Protection and Programs, which had been renamed the Director of CISA, was occupied by Senate-confirmed official Christopher Krebs. *Id.* at 8 n.11.

18. After Nielsen’s departure, Kevin K. McAleenan, who had been serving as the Commissioner of U.S. Customs and Border Protection, purported to assume the office of the Acting Secretary of DHS. *Kevin K. McAleenan*, Department of Homeland Security (Aug. 1, 2019), <https://www.dhs.gov/person/kevin-k-mcaleenan>.

19. At the time of Nielsen’s resignation, the Senate-confirmed Director of CISA, Christopher Krebs, was ahead of McAleenan under the DHS Orders of Succession and Delegations of Authorities. GAO Report at 8.

20. On November 8, 2019, McAleenan purported to issue an amendment to the DHS Orders of Succession and Delegation. ECF No. 24-17, Department of Homeland Security, Amendment to the Order of Succession for the Secretary of Homeland Security (Nov.

8, 2019). The amendment revised the language of Section II.A to provide that Annex A of DHS Delegation Order No. 00106—not Executive Order 13753—determined the order of succession in the event of a Secretary’s “death, resignation, or inability to perform the functions of the Office.” *Id.* The amendment also revised the succession order set forth in Annex A to be: (i) Deputy Secretary of Homeland Security; (ii) Under Secretary for Management; (iii) Commissioner of the U.S. Customs and Border Patrol; and (iv) Under Secretary for Strategy, Policy, and Plans. *Id.*

21. On November 13, 2019, McAleenan resigned from his purported role as Acting Secretary of DHS. Blackwell Decl. ¶ 7.

22. On November 13, 2019, Chad F. Wolf was confirmed by the Senate as the DHS Under Secretary for Strategy, Policy, and Plans. On the same day, Wolf purported to assume the Office of Acting DHS Secretary upon McAleenan’s resignation. *Chad F. Wolf*, Department of Homeland Security (Jan. 29, 2018), <https://www.dhs.gov/person/chad-f-wolf>.

23. On November 14, 2019, the Department of Homeland Security released another order of succession and delegation. ECF No. 41-1 Ex. 2, DHS Orders of Succession and Delegations of Authorities for Named Positions, Rev. 8.6, dated November 14, 2019. This amendment included the same order of succession as McAleenan’s November 8 pronouncement. *Id.* at A-1.

Dated: April 20, 2021

Respectfully submitted,

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